

In the Supreme Court of the United States

OCTOBER TERM, 1976

NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.,
ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT*

BRIEF FOR THE FEDERAL RESPONDENTS
IN OPPOSITION

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OPINIONS BELOW

The court of appeals issued no opinion. The report of the Interstate Commerce Commission (Pet. App. 1a-12a) is published at 121 M.C.C. 448.

JURISDICTION

The judgment of the court of appeals (Pet. App. 16a-17a) was entered November 24, 1976. The petition for a writ of certiorari was filed on February 22, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

Section 15(a) of the Agricultural Marketing Act, 46 Stat. 18, as amended, 12 U.S.C. 1141j; Section 203(b)(5) of the

Interstate Commerce Act, 49 Stat. 545, as added and amended, 49 U.S.C. 303(b)(5); and pertinent Commission regulations, 49 C.F.R. 1047.20, are set forth at pages 20a-22a of the petition.

QUESTION PRESENTED

Whether shipments of agricultural commodities on an "f.o.b. origin" basis by a member of an agricultural cooperative association, which shipments are transported in interstate commerce in motor vehicles controlled and operated by the association, constitute "member transportation" exempt from regulation under the Interstate Commerce Act.

STATEMENT

Under Section 203(b)(5) of the Interstate Commerce Act, 49 U.S.C. 303(b)(5), an agricultural cooperative association may, without authority from the Interstate Commerce Commission, engage in interstate transportation of commodities by motor vehicle for its members and, to a limited extent, for non-members. An agricultural cooperative association is defined by the Agricultural Marketing Act, 12 U.S.C. 1141j, as any association in which farmers act together in processing, handling, or marketing their farm products and which is operated for the mutual benefit of its members.

Sunkist Growers, Inc., is a California cooperative association engaged in the promotion, marketing, and distribution of fresh citrus fruits on behalf of approximately 8,500 grower members.¹ Sunkist operates packinghouses at which the citrus fruits are cleaned, graded, and packaged for distribution. It contracts for the sale of some of

¹Sunkist's present structure is discussed in *Case-Swayne Co., Inc. v. Sunkist Growers, Inc.*, 355 F. Supp. 408 (C.D. Calif.).

its fresh fruit on an "f.o.b. packinghouse" basis, under which the consignees assume the risk of market fluctuations, loss, and spoilage in transit and bear the freight charges (Pet. App. 5a-6a).

In November 1972, Sunkist filed a petition with the Commission seeking a declaratory order that its interstate shipments of citrus products f.o.b. packinghouse (origin), using vehicles of another cooperative which it proposed to join, constitute member transportation within the meaning of Section 203(b)(5) of the Act.

The Commission determined that the shipments qualify as member transportation (Pet. App. 1a-12a). It rested that conclusion on this Court's decision in *United States v. Pacific Coast Wholesalers' Association*, 338 U.S. 689, which held with respect to the similar statutory exemption for shippers' associations in Section 402(c) of the Act, 49 U.S.C. 1002(c): "There is nothing in the language of the Act or the legislative history to suggest that Congress intended the exemption to turn on the type of shipment which was involved, whether f.o.b. origin or f.o.b. destination (delivered price)." 338 U.S. at 691.

The court of appeals affirmed (Pet. App. 16a-19a). It held, with one judge dissenting, that *Pacific Coast Wholesalers'* "provides ample support for the decision reached [by the Commission]" (Pet. App. 17a).

ARGUMENT

The decision of the court of appeals is correct, and further review is not warranted.

The movement of agricultural commodities from packinghouse to consumer markets is fundamental to commercial farming. Among the reasons Congress has encouraged the development of agricultural cooperative associations is the promotion of effective merchandising of

farm products. 12 U.S.C. 1141(a). To this end, it has exempted from regulation under the Interstate Commerce Act vehicles controlled and operated by such associations performing transportation for members and, to a specified extent, for non-members. 49 U.S.C. 303(b)(5). See *Northwest Agricultural Cooperative Association v. Interstate Commerce Commission*, 350 F. 2d 252 (C.A. 9), certiorari denied, 382 U.S. 1011.

Petitioners argue that "shipments made f.o.b. packinghouse are made for non-member consignees, and, therefore, constitute non-member transportation" (Pet. 7). The court of appeals, however, correctly sustained the Commission's determination that the terms of the sale—whether f.o.b. destination or f.o.b. origin—do not affect the essential character of the shipments, transported in the association's motor vehicles, as "for" the association's members. Although legal title to the shipment may pass to the consignee at the packinghouse, the movement of the commodities from packinghouse to market plainly facilitates the farming business and benefits the association's farmer members. The Commission's interpretation of the Act is thus wholly consistent with the congressional purpose of encouraging the development of agricultural cooperative associations as a means of reducing marketing expense.

Here, as in *United States v. Pacific Coast Wholesalers' Association*, *supra*, there is nothing in the language or legislative history of the pertinent provision of the Act (in this case, Section 203(b)(5)) to suggest that Congress intended the availability of the exemption to turn on whether the shipment involved was "f.o.b. origin" or "f.o.b. destination." What matters is not the technical label that may be attached to the sale but the function that the association's

transportation service has in furthering the legitimate commercial interest of the association's farmer members in marketing their products.²

Contrary to petitioners' assertion (Pet. 9), the court of appeals' decision does not threaten improperly to divert traffic from regulated carriers. The shipments involve an agricultural commodity, and vehicles carrying such commodities are exempt from regulation under Section 203(b)(6) of the Act, 49 U.S.C. 303(b)(6) (see Pet. App. 5a). Thus if the fruit does not move in trucks operated by the cooperative, it will, in large part, move in unregulated trucks.

²The prompt, dependable movement of these perishable products to consumers assures Sunkist's farmer-members continued markets for their products. Sales made "f.o.b. origin" shift to consignees the risks of spoilage and other damages in transit and provide a basis for a uniform pricing policy for Sunkist's nationwide customers.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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